

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVEN R. HYKEN,

Petitioner

v.

AST SPORTSWEAR, INC.,

Respondent.

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Cancellation No. 32,513



05-13-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

Honorable Commissioner for Trademarks
BOX TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

MOTION TO COMPEL AND
BRIEF IN SUPPORT THEREOF

M A D A M :

In accordance with Rule 2.120(e) of the Trademark Rules of Practice, Respondent hereby moves this honorable Board for an Order compelling Petitioner to respond to Respondent's Third Set of Interrogatories to Petitioner, Respondent's Third Set of Requests for Admissions to Petitioner and Respondent's Third Set of Document Requests to Petitioner. Respondent's, undersigned attorney of record, properly served the Petitioner the aforementioned documents on March 26, 2002 (Exhibit A), well in advance of the discovery deadline of May 14, 2002. (Exhibit B). On April 30, 2002, Respondent's attorney wrote to Petitioner (Exhibit C) informing him of his obligation to provide the information sought and Petitioner failed to respond thereto. On May 6, 2002, Respondent's attorney followed up with a telephone call to Petitioner wherein Petitioner informed Respondent's attorney that he could not and would not respond to Respondent's third set of discovery requests. Respondent's attorney has made a good faith effort to resolve the discovery issues presented herein, but has not been able to reach any kind of an agreement with Petitioner.

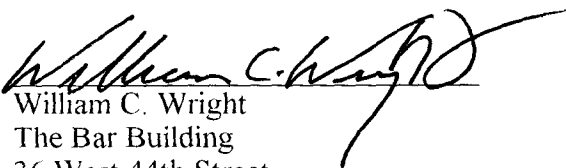
WHEREFORE, Respondent prays that the Board compel Petitioner to respond to Respondent's outstanding discovery requests.

Respectfully submitted,

GRAHAM, CAMPAIGN P.C.

Date: May 10, 2002

BY:



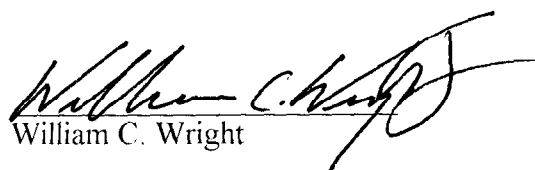
William C. Wright
The Bar Building
36 West 44th Street
New York, New York 10036-8178
(212) 354-5650

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MOTION TO COMPEL AND BRIEF IN SUPPORT THEREOF in Cancellation No. 32,513 is being deposited with the U.S. Postal Service, via first-class mail, with sufficient postage prepaid, in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, this 10th day of May, 2002.

Dated: May 10, 2002
New York, NY

BY:


William C. Wright

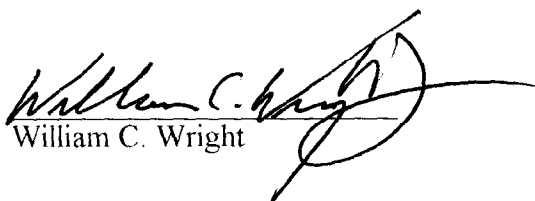
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO COMPEL AND BRIEF IN SUPPORT THEREOF in Cancellation No. 32,513 was served by first class mail, postage prepaid, this 10th day of May, 2002 upon Petitioner:

Steve Hyken
8637 Kester Ave.
Panorama City, CA 91402

Dated: May 10, 2002
New York, NY

BY:


William C. Wright

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED

OCT 26 2001

PAT. & T.M. OFFICE

Paper No. 2

Reg. No. 2,334,221

Cancellation No. 32,513

AST Sportswear, Inc.
135 West 30th Street
New York, NY 10001

Steven Hyken aka Johnny
Blaze

v.

AST Sportswear, Inc.

A petition, a copy of which is attached, has been filed to
cancel the above-identified registration.

Proceedings will be conducted in accordance with the
Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date
falling on Saturday, Sunday or a holiday).

RECEIVED
OCT 26 2001
12/6/01

Proceedings will be conducted in accordance with the
Trademark Rules of Practice, set forth in Title 37, part 2,
of the Code of Federal Regulations. The parties are
reminded of the recent amendments to the Trademark Rules
that became effective October 9, 1998. See Notice of Final
Rulemaking published in the Official Gazette on September
29, 1998 at 1214 TMOG 145. Slight corrections to the
rules, resulting in a correction notice, were published in
the Official Gazette on October 20, 1998 at 1215 TMOG 64.
A copy of the recent amendments to the Trademark Rules, as
well as the Trademark Trial and Appeal Board Manual of
Procedure (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:

November 15, 2001

Discovery period to close:

May 14, 2002

30-day testimony period for party
in position of plaintiff to close:

August 12, 2002

30-day testimony period for party
in position of defendant to close:

October 11, 2002

15-day rebuttal testimony period
for plaintiff to close:

November 25, 2002

11/15/01

5/14/02

7/13/02

8/12/02

9/11/02

10/11/02

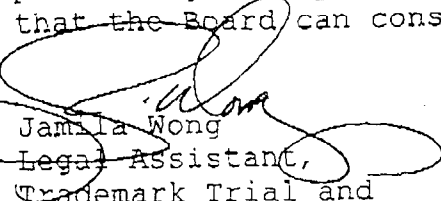
A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the Official Gazette notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the Official Gazette containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such

proceedings, they should notify the Board immediately, so
that the Board can consider consolidation of proceedings.


Jamila Wong
Legal Assistant,
Trademark Trial and
Appeal Board
(703) 308-9300, ext. 143

Michael S. Duberchin
LAW OFFICES OF MICHAEL S. DUBERCHIN, P.C.
24007 Ventura Boulevard
Suite 115
Calabasas, CA 91302

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVEN R. HYKEN A.K.A. JOHNNY BLAZE,

Petitioner,

v.

AST SPORTSWEAR, INC.,

Respondent.



05-13-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #74

Cancellation No.: 32,513

RESPONDENT'S THIRD SET OF INTERROGATORIES
TO PETITIONER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent, AST Sportswear Inc., propounds the following Interrogatories to Petitioner, Steven R. Hyken, to be answered in writing under oath within thirty days of service hereof.

INTERROGATORY NO. 34

Identify the last date the term JOHNNY BLAZE was used on or in connection with T-shirts.

INTERROGATORY NO. 35

Identify what steps have been taken, since that date, to resume use of the term JOHNNY BLAZE on or in connection with T-shirts.

INTERROGATORY NO. 36

Identify Ms. Marie and specify why Petitioner believes that she was actually confused into thinking that Steve Hyken was the head of AST.

INTERROGATORY NO. 37

Identify with specificity the period of time, including dates and years, that Petitioner did not provide entertainment services under "JOHNNY BLAZE".

INTERROGATORY NO. 40

Identify in what capacity Petitioner performed as "JOHNNY BLAZE" on or at the Gong Show, Eye on L.A., U.C. Irvine, Dimples in Burbank, Corbin Bowl in Tarzana, the Shriners Hospital for Crippled Children, The All Things Positive Show, karaoke bars, parties, coffee houses, bowling alleys, piano bars, or any place else Petitioner may claim he has appeared.

INTERROGATORY NO. 41

Identify all documents and things that show, refer, or relate to Petitioner's response to Interrogatory No 40.

INTERROGATORY NO. 42

Did Petitioner perform as an amateur or a professional in the places Petitioner claims he has appeared?

INTERROGATORY NO. 43

State the meaning or significance of the term JOHNNY BLAZE as used by the Petitioner.

INTERROGATORY NO. 44

Identify with specificity the parties to whom Petitioner markets its services to.

INTERROGATORY NO. 45

Identify all documents and things that show, refer, or relate to Petitioner's response to Interrogatory No. 44.

INTERROGATORY NO. 46

Specify the connection, if any, between Petitioner's stage name and Elvis Presley.

INTERROGATORY NO. 47

Specify the manner in which Petitioner was involved with "The Johnny Blaze show".

INTERROGATORY NO. 48

Specify where and when "The Johnny Blaze show" was released.

INTERROGATORY NO. 49

Specify where and when "The Johnny Blaze show" was seen.

INTERROGATORY NO. 50

Identify all parties involved with "The Johnny Blaze show".

INTERROGATORY NO. 51

State whether any merchandise was ever sold on or in connection with "The Johnny Blaze show" and the amount of merchandise sold.

INTERROGATORY NO. 52

Identify all documents and things referring or relating to the merchandise sold on "The Johnny Blaze show" and the dollar amount of merchandise sold.

INTERROGATORY NO. 54

Specify the manner in which JOHNNY BLAZE was used, if it was used at all, as a trade/service mark on or in connection with "The Johnny Blaze show".

INTERROGATORY NO. 55

Specify the manner in which JOHNNY BLAZE was used, if it was used at all, as a trade/service mark on or in connection with "The Johnny Blaze show" merchandise.

INTERROGATORY NO. 56

Specify if Petitioner is aware of the Tennessee State service mark registration of JOHN BLAZE for a musical group.

INTERROGATORY NO. 57


Specify what action, if any, Petitioner plans to take with regard to the Tennessee State service mark registration of JOHN BLAZE.

Respectfully submitted,

GRAHAM, CAMPAIGN P.C.
Attorneys for Respondent

Dated: March 26, 2002

BY:


William C. Wright
The Bar Building
36 W. 44th Street
New York, New York 10036-8178
(212) 354-5650

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on Petitioner's attorneys by first-class mail, postage prepaid, this 26th day of March, 2002, addressed to:

Law Offices of Michael S. Duberchin, P.C.
Michael S. Duberchin, Esq.
4768 Park Granada, Suite 212
Calabasas, California 91302-3349

Law Offices of Levy, McMahon, et. al.
16830 Ventura Blvd., Suite 500
Encino, California 91436

Dated: March 26, 2002
New York, New York

BY: 
William C. Wright

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEVEN R. HYKEN A.K.A. JOHNNY BLAZE,

Petitioner,

v.

AST SPORTSWEAR, INC.,

Respondent.

Cancellation No.: 32,513

RESPONDENT'S THIRD SET OF REQUESTS FOR ADMISSIONS
TO PETITIONER

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure and Rule 410.01 et. seq. of the Trademark Rules of Practice, Respondent, AST Sportswear Inc., propounds the following Requests for Admissions to Petitioner, Steven R. Hyken, to be answered in writing under oath within thirty days of service hereof.

ADMISSION NO. 48

Admit that Petitioner has not rendered entertainment services continuously as "JOHNNY BLAZE" since 1977.

ADMISSION NO. 49

Admit that Petitioner does not have any records or documents which evidence the amount of money expended by the Petitioner in connection with the sale, distribution, advertising, and provision of Petitioner's goods and services under the term JOHNNY BLAZE.

ADMISSION NO. 50

Admit that Petitioner has not been able to support himself by performing as "JOHNNY BLAZE", without other, outside, employment.

ADMISSION NO. 51

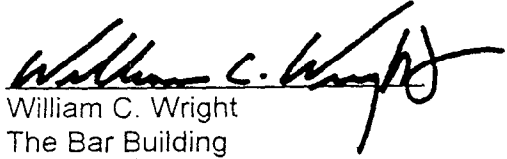
Admit that Petitioner did not make-up or invent the name JOHNNY BLAZE.

Respectfully submitted,

GRAHAM, CAMPAIGN P.C.
Attorneys for Respondent

Dated: March 26, 2002

BY:


William C. Wright
The Bar Building
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Dated: March 26, 2002
New York, New York

BY: 
William C. Wright

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Petitioner,

v.

AST SPORTSWEAR, INC.,

Respondent.

Cancellation No.: 32,513

RESPONDENT'S THIRD SET OF DOCUMENT REQUESTS
TO PETITIONER

Respondent hereby requests in accordance with Rules 26(e) and 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice that Petitioner produce the documents hereinafter described, in the form of legible, complete and unredacted copies, at the offices of Graham, Campaign P.C., 36 West 44th Street, Suite 1300, New York, New York, within thirty days of service hereof.

REQUESTS

32. All documents and things referring or relating to Steve Hyken's alleged use of Johnny Blaze Productions or Johnny Blaze as a trade name or as part of a trade name.

33. All documents and things that were utilized to respond to Respondent's First Set of Requests for Admissions, Respondent's Second Set of Requests for Admissions, Respondent's Third Set of Requests for Admissions, Second Set of Interrogatories to Petitioner and Third Set of Interrogatories to the Petitioner,

34. All documents and things referring or relating to "The Johnny Blaze Show".

35. A complete copy of Extra Variety, Vol. 1, Issue 8, dated August 1, 1995.

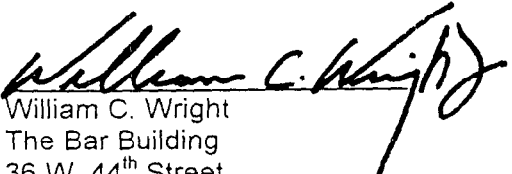
36. All documents and things Petitioner intends to use at trial in this proceeding.
37. All documents and things, including but not limited to invoices, that relate to the merchandise sold on or in connection with "The Johnny Blaze show".

Respectfully submitted,

GRAHAM, CAMPAIGN P.C.
Attorneys for Respondent

Dated: March 26, 2002

BY:


William C. Wright
The Bar Building
36 W. 44th Street
New York, New York 10036-8178
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16830 Ventura Blvd., Suite 500
Encino, California 91436

Dated: March 26, 2002
New York, New York

BY: 
William C. Wright

H. JOHN CAMPAIGN *
JOHN M. KEENE ♦
CHARLES H. KNULL †
GAIL E. NICKOLS
WILLIAM C. WRIGHT ♦
SUSAN E. ESTERHAY *
CYNTHIA H. FAREED

OF COUNSEL:
DAVID ARENS
ARES DEMETRIUS AXIOTIS ♦
GERARD H. DAVIS ♦
CHARLES E. TEMKO

♦ ADMITTED TO U.S.
SUPREME COURT
♦ ALSO ADMITTED IN N.J.
♦ ALSO ADMITTED IN CT.
† ALSO ADMITTED IN D.C.



Attorneys at Law

The Bar Building
36 West 44th Street
New York, New York
10036-8178 U.S.A.

Tel. (212) 354-5650
Fax (212) 354-6354
E-MAIL GRACAM@AOL.COM
WWW.GRAHAMCAMPAIGN.COM

April 30, 2002

BY FEDERAL EXPRESS

Mr. Steven Hyken
8637 Kester Ave.
Panorama City, CA 91402

Re: Steven R. Hyken v. Ast Sportswear, Inc., Cancellation No. 32,513

Dear Mr. Hyken:

This letter is sent pursuant to Trademark Rule 2.120 in an effort to resolve discovery issues.

You are tardy in responding to Respondent's Third Set of Interrogatories to Petitioner, Respondent's Third Set of Request for Admissions to Petitioner and Respondent's Third Set of Document Requests to Petitioner. Additionally, you have not properly responded to Admission Request No. 40., since the objection that "the document speaks for itself" is improper under Rule 36 of the Federal Rules of Civil Procedure. Accordingly, you must provide complete responses to the foregoing by **May 6, 2002**. Failure to comply, will result in our client filing a Motion to Compel.

Sincerely,

GRAHAM, CAMPAIGN P.C.

William C. Wright